



4. Plaintiff's Original Petition did not identify the amount of damages sought by Plaintiff. As a result, Defendants could not ascertain from this initial pleading whether this case could be removed to federal court based on diversity jurisdiction. On November 10, 2010, Plaintiff delivered to Defendant a Notice Letter that identified the amount of damages sought by Plaintiffs.<sup>4</sup> Upon receipt of this Notice Letter, Defendant was, for the first time, able to ascertain the amount in controversy and to determine that this case is removable based on diversity jurisdiction.

5. This Notice of Removal is filed within thirty days of the receipt of service of Plaintiff's November 8, 2010, Notice Letter. This Notice of Removal is also filed within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(b).

#### **Grounds for Removal**

6. Defendant is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

#### **Diversity of Citizenship**

7. This is an action with complete diversity of citizenship between Plaintiff and Defendant.

8. Plaintiff is citizen of Texas.<sup>5</sup>

9. Defendant American Security Insurance Company is a foreign insurance company engaging in the business of insurance in Texas.<sup>6</sup>

10. Defendant Phillip S. Abernathy is a citizen of South Carolina.<sup>7</sup>

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<sup>3</sup> See Exhibit B, Defendant's Original Answer.

<sup>4</sup> See Exhibit H, November 8, 2010, Notice Letter.

<sup>5</sup> See Exhibit B, Plaintiff's Original Petition ¶ 2.

<sup>6</sup> See *id.* at ¶ 3.

11. No change of citizenship has occurred since commencement of the state court action. Accordingly, diversity of citizenship exists among the parties.

**Amount in Controversy**

11. Plaintiff's November 10, 2010, Notice Letter demonstrates that the amount in controversy is greater than \$75,000.00. That letter demanded payment of a total of \$385,000.00 as a result of Plaintiff's alleged damages.<sup>8</sup> This amount includes: \$225,000.00 in economic damages, \$50,000.00 in mental anguish damages, and \$110,000.00 for expenses including attorneys' fees. Plaintiffs' Notice Letter demonstrates that the total amount in controversy in this action exceeds the sum of \$75,000.00.

**Venue**

12. Venue lies in the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. §§ 1441(a) and 1446(a) because the Plaintiff filed the state court action in this judicial district and division.

**Notice**

13. Defendant will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon Plaintiff's counsel, a notice of the filing of this notice of removal.

**Jury Demand**

14. Plaintiff has demanded a jury trial in the state court action.

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<sup>7</sup> See *id.* at ¶ 4.

<sup>8</sup> See Exhibit H, November 10, 2010, Notice Letter.

**State Court Pleadings**

15. Copies of all state court pleadings and orders are attached to this Notice of Removal.

**Exhibits to Notice of Removal**

16. Pursuant to Rule 81 of the Local Civil Rules for the Southern District of Texas, the following documents are attached to this Notice as corresponding lettered exhibits:

- A. All executed process in the case;
- B. Pleadings asserting causes of action, e.g., petitions, counterclaims, cross actions, third-party actions, interventions and all answers to such pleadings;
- C. All orders signed by the state judge;
- D. Certified copy of the docket sheet;
- E. An index of matters being filed;
- F. A list of all counsel of record, including addresses, telephone numbers and parties represented;
- G. Civil Cover Sheet;
- H. Plaintiff's November 10, 2010, Notice Letter.

WHEREFORE, Defendant, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 11th Judicial District Court of Harris County, Texas to this Court.

Dated: November 18, 2010

Respectfully submitted,

By: David T. McDowell y/p SAE.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on November 18, 2010, on the following counsel of record by certified mail, return receipt requested:

Amber Anderson Mostyn  
THE MOSTYN LAW FIRM  
3810 West Alabama Street  
Houston, TX 77027



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Shannon A.S. Quadros